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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

DLH1-PAU.03

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on

Signature

Typed or printed name

Rosanne Henehan

Application Number

10/027,369

Filed

12/20/2001

First Named Inventor

David L. Henty

Art Unit

2629

Examiner

Srilakshmi K. Kumar

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the



applicant/inventor.



assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)



attorney or agent of record.

Registration number



attorney or agent acting under 37 CFR 1.34.

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.



\*Total of forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

is respectfully submitted that the Examiner's rejections are based on clear errors due either to ignoring the clear claim limitations and/or to conclusory and incorrect interpretations of how one skilled in the art would view the cited references. Therefore, the Examiner has failed to establish a prima facie basis for the rejections and proceeding with the Appeal is unnecessary and inappropriate. Since the errors constitute clear error they are appropriate for review under the pre-appeal brief review process. In accordance with the guidelines for the pre-appeal brief procedure the following will focus on these specific simple issues of clear error, without waiver of numerous additional arguments which Applicant reserves for the Appeal should it be necessary.

### 1. The Examiner has Ignored the Claim Language

For brevity and consistent with the guidelines for the present pre-appeal brief review procedure Applicant refers to the application as filed for a discussion of the claimed invention. The rejection of all independent claims is based on a combination of two references, Hsien and Klein. The Hsien reference is directed to a wireless mouse with an improved FM RF transmission circuit to obtain the well known advantages of FM transmission in cordless mouse applications. (Hsien, col. 1, Background) The Klein reference is directed to the use of RFID tags for tracking of lost articles such as packages by incorporating the tags in labels and then tracking the package using the read ID and a web based database. The tags are specifically stated to be capacitively read BiStatix tags which use conductive ink in place of inductive coupled wire coils to facilitate attaching the tags to printed labels. (Klein, col. 4, l. 34-col. 5, l. 47)

The Examiner stated that it would be obvious to combine Hsien and Klein to arrive at the present invention as claimed. However, the Examiner ignored the fact that all claims include limitations directed to a shared reader for decoding

both the tags and the input device (e.g., mouse or keyboard) signals. The Examiner simply argued on general grounds that Hsien and Klein could be combined to provide "a wireless system [that] transmits and receives wireless signals and uses RFID tagging" (final office action at page 9). But such a combination of Hsien and Klein would not use a common reader since a reader for a capacitively coupled system such as in Klein would simply not work to read a signal from an RF FM transmission system as in Hsien. Therefore, even assuming arguendo the references would be combined the result would be a wireless system with a separate FM receiver and RFID tag reader and not the claimed invention.

## 2. The Examiner has Not Established a Factual Basis for Obviousness

The Examiner's reasons for combining the references were purely conclusory in nature and did not evaluate the obviousness issue from the standpoint of one skilled in the art. This failure to establish a prima facie case of obviousness was discussed in Applicant's last response and those arguments are incorporated herein by reference for brevity.

## 3. Conclusion

Due to the flawed interpretation of the claims and references it is respectfully submitted the final rejection is clearly flawed and these issues are not appropriate for consideration by the Board of Appeals. Accordingly, it is respectfully requested that the final rejection be withdrawn and the application allowed.

RESPECTFULLY SUBMITTED,

  
David L. Henty

APPLICANT